IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1113 OF 2005

IN

SUMMARY SUIT NO.451 OF 2001

Mr.V.R.Maheshwari, Proprietor of
M/s.V.R.Maheshwari & Co. ...Plaintiff

vs.

1. Mr.K.G.Rao & others. ...Defendants

Ms.Mamta Shah, for Plaintiff.

Mr.S.C.Naidu i/b. B.V.Phadnis, for Defendant no.2 in support.

Mr.Pradip Sancheti i/b. M/s.A & A Law, for Defendant no.4.

CORAM: D.K.DESHMUKH,J.

DATED: 12th October,2006

P.C.:-

1. I have heard the learned Counsel appearing for both the sides mainly the plaintiff and defendant no.2. I have also heard the learned Counsel appearing for Ms.Asha Bhuta. On the record of this Court, an affidavit of service of summons for judgment on defendant no.2 which Advocate for plaintiff has undertaken to file on 5.2.2003, is

also not found. It is clear from the affidavit filed by Advocate Ms.Asha Bhuta that defendant no.2 was not at fault for not making an application seeking leave of the Court to defend the suit. It appears that the Advocate was at fault. The learned Counsel appearing for the concerned Advocate Ms.Bhuta has stated that the concerned Advocate will pay to the defendant no.2-the real sufferer as and by way of cost of this notice of motion Rs.15,000/-. Taking overall view of the matter, therefore, the notice of motion is granted in terms of prayer clause (a). It is clarified that the plaintiff shall be at liberty to take out fresh summons for judgment against defendant no.2.